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Attorneys for Plaintiff, JOSUE SOTO, Individually, on Behalf of All Others Similarly Situated,
on Behalf of All Other Aggrieved Employees, and on Behalf of the General Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSUE SOTO, Individually, On Behalf of All)	Case No. 08-CV-0033 L (AJB)
Others Similarly Situated, and on Behalf of the)	
General Public,)	<u>CLASS ACTION</u>
)	
Plaintiff,)	PLAINTIFF'S NOTICE OF MOTION AND
)	MOTION TO DISMISS COUNTERCLAIM
v.)	AS TO JOSUE SOTO AND THIRD PARTY
)	COMPLAINT AS TO SAYBE'S LLC
DIAKON LOGISTICS (DELAWARE), INC., a)	PURSUANT TO FED. R. CIV. P. 12(b)(6)
foreign corp.; and DOES 1 through 50,)	
inclusive,)	Date: April 7, 2008
)	Time: 10:30 a.m.
Defendants.)	Judge: Hon. M. James Lorenz
)	Dpt: 14
)	
)	Original Complaint Filed: 12/5/2007
AND ALL COUNTER-CLAIMS)	
)	

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2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on April 7, 2008 at 10:30 a.m., or as soon thereafter as
4 counsel may be heard in Courtroom 14 of the above-entitled Court, located at 880 Front Street, San
5 Diego, California, 92101, Plaintiff/Cross Defendant JOSUE SOTO and Third Party Defendant
6 SAYBE'S LLC will, and hereby do, move this Court to dismiss Defendant's counterclaim and
7 Third-Party Complaint for failure to state a claim upon which relief can be granted (Federal Rule
8 of Civil Procedure 12(b)(6).

9 This motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, all matters in the Court's file, other matters of which this
11 Court may take judicial notice, and any other oral and documentary evidence and argument as may
12 be presented prior to, or at the hearing of, this motion.

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14 DATED: February 8, 2008

EMGE & ASSOCIATES

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16 s/ Derek J. Emge
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24 Attorneys for Plaintiff, JOSUE SOTO,
25 Individually, on behalf of all others similarly
26 situated, all aggrieved employees, and on
27 behalf of the General Public, and attorneys for
Third-Party Defendant SAYBE'S LLC